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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1969

No. 508

THOMAS HANNA,

Petitioner,

VS.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition For A Writ Of Certiorari To The Supreme Court Of Illinois

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Petitioner Thomas Hanna prays that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois affirming his conviction of burglary and sentence to the Illinois State Penitentiary.

REFERENCE TO REPORTS OF OPINIONS.

People v. *Hanna, et al.*, 42 Ill. 2d 323, (Gen. No. 41521), 247 N.E. 2d 610, is attached as an Appendix.

STATEMENT OF JURISDICTIONAL GROUNDS.

The judgment of the Supreme Court of Illinois was entered on March 27, 1969. A timely petition for rehearing filed on April 3, 1969, was denied on May 27, 1969. Jurisdiction of this Court is invoked under Title 28, USC, sec. 1257 (3).

QUESTIONS PRESENTED FOR REVIEW.

1. Whether the naked suspicion of an informer is distilled to the strength of probable cause by filtering it through a network of police officers?
2. Whether a search of an automobile trunk at a police station thirty minutes after an arrest on the street without a warrant is constitutionally permissible?

CONSTITUTIONAL PROVISIONS INVOLVED.

The Fourth Amendment and the Due Process Clause of the Fourteenth Amendment.

STATEMENT OF THE CASE.

A resident of Evergreen Park, Illinois, who lived near premises in said suburb that had been recently burglarized, told one Sergeant Ward that he had seen a car with two male occupants and heard their conversation which "seemed suspicious to him." Sergeant Ward put the car under surveillance for about a week prior to April 2, 1966. About 8:00 P.M. that evening he saw petitioner Hanna and another man he later learned to be Cooper get into the car. He noticed that the car had a different license plate than one earlier seen. A check of the plate revealed that the car was owned by one Sandra Blottiaux, "known by the police to be the sister of 3 known criminals." (App. 2a) Sergeant Ward followed the car over the Tri-State Tollway to a gas station in Skokie, Illinois, a suburb north of Chicago. There he learned that the occupants of the car had asked for directions to Skokie. He telephoned the Skokie police and then went over to Skokie police headquarters where he informed one Lieutenant Cleburne about the automobile and returned to Evergreen Park, a suburb southwest of Chicago. (App. 2a)

Skokie radioed all its squad cars to call their station and when the Skokie officers telephoned they were given a description of the car and the occupants as conveyed by Sergeant Ward of the Evergreen Park police. At 10:12 P.M. a burglary in progress came in and at 10:15 P.M. Sergeant Langley of the Skokie police responded and found an open window in a lean-to shed attached to a two-story brick building. The caller who lived one door east told him he had seen a man lifting the window. At

11:00 P.M. the Skokie police learned that the Niles police had the petitioner in custody. (App. 3a)

The Niles police stopped the petitioner on the street and asked him and Cooper for identification. The petitioner responded: "Let's go down to the station and we'll get this straightened out." The ignition key would not open the trunk. Thirty minutes later a locksmith was called and the trunk was forced open. In the trunk were articles which were later identified as having been taken in a burglary committed earlier that evening in Wilmette, a suburb located further north of both Skokie and Niles. Petitioner and Cooper were convicted of that burglary. (App. 5a)

A motion to suppress the evidence discovered in the trunk of the automobile was overruled by the trial court (A. 12) and the court below affirmed. (App. 9a)

A timely petition for rehearing was filed on April 3, 1969, citing *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. 216. Said petition was denied on May 27, 1969.

Execution of petitioner's penitentiary sentence has been stayed pending this Court's ruling upon the instant petition for writ of certiorari.

REASONS FOR GRANTING THE WRIT.

1. IS THE NAKED SUSPICION OF AN INFORMANT DISTILLED TO THE STRENGTH OF PROBABLE CAUSE BY FILTERING IT THROUGH A NETWORK OF POLICE OFFICERS?

The automobile in the instant case was first brought to the attention of the Evergreen Park police department by an Evergreen Park resident who lived near premises in said suburb that had been burglarized. He told one Sergeant Ward that he had seen the car and heard the conversation of two male occupants which "seemed suspicious to him." Sergeant Ward put the car under surveillance for about a week prior to April 2, 1966. About 8:00 P.M. that evening he saw petitioner Hanna and another man he later learned to be Cooper get into the car. He then noticed that the car had a different license plate than the one earlier seen. (App. 2a) How was the license plate different? Was it a different number for the same year? The record is silent in that regard. For aught else that appears of record, it might simply have been a renewal plate for the current year. It is a matter of common knowedge that the Secretary of State allows a period of grace to renew license plates. This surmise is borne out by the fact that the license number observed on April 2, 1966, was 1966 Illinois license No. 921-183.

That number was checked by the police. They learned that it was the license of the car in question which was owned by one Sandra Blottiaux, "known by the police to be the sister of 3 known criminals." (App. 2a) Since the concept of "attainder of blood" has heretofore been unheard of in the annals of American jurisprudence, we

doubt very seriously that such a fact could be considered an important ingredient in the distilling process which commenced upon the single germ of a resident's *suspicion*.

At 8:00 P.M., Sergeant Ward followed the automobile of petitioner from Evergreen Park, a suburb located southwest of Chicago, to the Tri-State Tollway, north to Dempster Street (8800 North) and then east to Skokie, the first suburb north of Chicago, to a gas station. He also stopped at said gas station where he learned that the petitioner had asked directions to Skokie. Sergeant Ward then telephoned the Skokie police department and described the car and its occupants. Then he drove to the Skokie police department headquarters where he gave all of his information to one Lieutenant Cleburne and returned to Evergreen Park. (App. 2a)

Skokie radioed all its squad cars to call their station and when the Skokie officers telephoned they were given a description of the car and the occupants as conveyed by Sergeant Ward of the Evergreen Park police. At 10:12 P.M. a burglary in progress came in and at 10:15 P.M. Sergeant Langley of the Skokie police responded and found an open window in a lean-to shed attached to a two-story brick building. The caller who lived one door east told him he had seen a man lifting the window. At 11:00 P.M. the Skokie police learned that the Niles police had the petitioner in custody. (App. 3a)

There is nothing of record connecting the petitioner with any offense in Skokie. Indeed, the time and distance involved would appear to make any involvement in Skokie offenses impossible.

The Niles police stopped the petitioner on the street and asked him and Cooper for identification. The peti-

tioner responded: "Let's go down to the station and we'll get this straightened out." The ignition key would not open the trunk. Thirty minutes later a locksmith was called and the trunk was forced open. In the trunk were articles which were later identified as having been taken in a burgary committed earlier that evening in Wilmette, a suburb located further north of both Skokie and Niles. Petitioner and Cooper were convicted of that burglary. (App. 5a)

Thus, the facts of record at bar demonstrate that there was no probable cause for arrest without a warrant. The petitioner and the automobile in question came to the attention of the Evergreen Park police based upon the naked suspicion of an Evergreen Park resident. At that juncture the Evergreen Park police certainly did not have sufficient probable cause to arrest the petitioner. Nothing occurred during the one-week surveillance of the automobile which would give the police probable cause to arrest the petitioner. Nothing occurred during the trip from Evergreen Park to Skokie to the gas station to give Sergeant Ward probable cause to arrest the petitioner. He did not arrest the petitioner at that time. Although he conveyed his suspicion of petitioner and the car to the Skokie police based upon the conveyed suspicion of the Evergreen Park resident, the Skokie police did not thereby have sufficient probable cause to arrest the petitioner. Nothing in this record even remotely connects the petitioner with any offense that may have occurred in Skokie on the night of the arrest. Skokie did not arrest the petitioner. Niles arrested the petitioner based upon *suspicion* three times removed; from the Evergreen Park resident to Sergeant Ward of the Evergreen Park police to the Skokie police to the Niles police via radio. That is not

probable cause. *Beck* v. *Ohio*, 379 U.S. 89; *Sibron* v. *New York*, 392 U.S. 40.

2. ASSUMING FOR THE NONCE AND ARGUENDO THAT THE ARREST WITHOUT A WARRANT WAS LEGAL IN ALL RESPECTS, THE SEARCH OF THE PETITIONER'S AUTOMOBILE AT THE NILES POLICE STATION THIRTY MINUTES LATER WAS ILLEGAL.

The court below affirmed petitioner's conviction upon the premises that *Cooper* v. *California*, 386 U.S. 58, overruled *Preston* v. *United States*, 376 U.S. 364, and that *United States* v. *Rabinowitz*, 339 U.S. 56, is of continuing validity and vitality. (App. 7a-8a) Neither premise is correct. *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. 216; *Chimel* v. *California*, ... U.S. ....., 23 L. Ed. 2d 685.

Since the basic postulates upon which the court below adjudicated petitioner's Fourth Amendment rights were faulty, it follows logically that its conclusion upholding the search are likewise faulty. Without further ado your Honors should summarily vacate the judgment of conviction in the case at bar for further consideration in the light of *Dyke* v. *Taylor Implement* and *Chimel* v. *California*.

Once the court below has been authoritatively informed that *Preston* v. *United States* is of continuing vitality despite *Cooper* v. *California*, the case at bar will become an *a fortiori* reversal. Consider the reasons for permitting contemporaneous searches following warrantless but otherwise valid arrests, i.e., the need to seize weapons and other things which might be used to assault an officer or effect an escape; the need to prevent the destruction of evidence of *the* crime. Those justifications are absent where a search is remote in time and place from the arrest. (23 L. Ed. 2d at 694)

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In the case at bar, there was absolutely no danger of the arresting officers being assaulted or the petitioner escaping: "When asked their names and for some identification, Hanna responded by suggesting: 'Let's go down to the station and we'll get this sraightened out.'" (App. 4a) As regards destruction of evidence of *the* crime, there simply was no crime known or even suspected until *after* the search of the automobile trunk. "In the trunk were articles *subsequently* identified as taken in a burglary committed earlier that evening in Wilmette, and it is from their conviction of this burgary that defendants now appeal." (App. 5a, emphasis supplied.)

CONCLUSION.

From the above and foregoing several premises, petitioner prays that your Honors will consider his complaints to be of sufficient constitutional magnitude to warrant this Court's review on writ of certiorari.

Respectfully submitted,

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August 22, 1969.

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APPENDIX

Opinion of the Supreme Court of Illinois

Mr. Justice Underwood delivered the opinion of the court:

Defendants, Thomas Hanna and Theodore Raymond Cooper, following a bench trial in the Cook County circuit court, were found guilty of burglary. Hanna was sentenced to imprisonment for a year and a day, and Cooper was admitted to probation for 3 years with the first 30 days to be served in the House of Correction. Their appeals come directly here on the basis of alleged constitutional violations. The issues are whether probable cause existed for their warrantless arrest and the ensuing search of the car trunk, and whether application of the rule that recent, unexplained possession of stolen property raises a presumption of guilt violates defendant's constitutional right to remain silent.

The latter question is easily disposed of. No objection was made at any time in the trial court on the basis now urged. In fact, counsel for defendants initiated the stipulation that the evidence heard on the motion to suppress be considered as evidence at the trial. Constitutional claims, like other claims, may be waived, and the absence of any prior objection prohibits consideration of the alleged invalidity of the recent, unexplained possession rule. *People* v. *Hubbard,* 38 Ill. 2d 104, 110; *City of Chicago* v. *Joyce,* 38 Ill. 2d 368, 371-72.

Resolution of the probable cause issue requires reference to the facts. Essentially uncontroverted are the following: Sergeant Ward of the Evergreen Park police de-

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partment testified that subsequent to a recent burglary in that community an identified resident living near the burglarized premises reported to the Evergreen Park police that he had seen 2 men in a described auto and heard their conversation which seemed suspicious to him. The car was a 1963 red Ford Falcon with 1966 Illinois license No. 921-183. The record owner of the car proved to be Sandra Blottiaux, known by the police to be the sister of 3 known criminals. Sergeant Ward placed the car under surveillance for about a week prior to April 2, 1966. About 8:00 P.M. that evening he noticed a man he knew to be defendant Hanna and another man he later learned to be Cooper get into the car. He noticed the car had a license plate different from the one earlier seen, and he followed the car north on the Tri-State Tollway until it reached Dempster Street. There it left the tollway and moved east on Dempster Street, stopping at a gas station. The sergeant also stopped at the gas station and learned the 2 men had asked for directions to Skokie. He then called the Skokie police department and told the dispatcher the 2 men were in the vicinity, furnishing their descriptions and a description of the car. He then drove to the Skokie police department headquarters, where he met with Lieutenant Cleburne and gave him all the information which he had regarding both men. Sergeant Ward then returned to Evergreen Park.

Lieutenant Cleburne's testimony corroborated that of Sergeant Ward as to the communication from the latter. Additionally, however, the lieutenant testified that Sergeant Ward told him one of the occupants of the car, Hanna, was a known burglar. This information was relayed by Lieutenant Cleburne to the Skokie officers, fol-

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lowing which he called the Niles police department and surrounding communities, giving the same information to them. Sergeant Langder, a Skokie police officer, also testified to the communication wth Sergeant Ward, and stated that immediately after receiving the sergeant's telephone call Lieutenant Cleburne instructed "our cars to call our station and when they telephoned into the station they were given the information in question." At 10:12 that evening, Sergeant Langder received a call regarding a burglary in process in Skokie. He responded to the call, arriving at a two-story brick home at 10:15 P.M. He there found open about 10 inches a rear window just above a small lean-to shed. He spoke to the caller who stated that he lived one house east and had observed a person, whom he described, standing on top of the lean-to and lifting the window. Sergeant Langder then notified Lieutenant Cleburne of the situation including the description of the subject. This communication was made over the police car radio, *i.e.* from Sergeant Langder's car to Lieutenant Cleburne's who was also out on a call at that time. The investigation was completed at 11:00 P.M. and at his time Sergeant Langder was advised by radio that Niles detectives had stopped the Falcon auto.

Vigorously attacked is part of the testimony of Niles Police Lieutenant Edward Dennis. He stated that his first knowledge of the auto in question was furnished by 2 separate telephone calls from Lieutenant Cleburne who gave him the information provided by Sergeant Ward and in particular a description of the car and its occupants. Lieutenant Dennis did not testify that he was informed that one of the car's occupants was a known burglar, but he was not specifically questioned as to this.

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(Appendix)

After receiving the second telephone call Lieutenant Dennis testified that he and Niles Sergeant Golbach left the Niles police headquarters and took up a position on Dempster Street. While there Lieutenant Dennis testified that he received a radio message that the car in question had been seen leaving the area of an attempted burglary by a Skokie police officer and was last seen going west on Dempster. It is this testimony regarding the radio message which is challenged by defendants. Lieutenant Dennis did not know which of the 28 Skokie officers on duty that night had furnished the information.

About 35 to 40 minutes after receiving the radio message Lieutenant Dennis and Sergeant Golbach observed and stopped a vehicle containing two white males which fit the description previously given them. Using his flashlight Lieutenant Dennis was able to see a pair of worn leather gloves and a multiple purpose instrument, one use of which was a glass cutter, on the dash board. On the rear floor behind the passenger seat the witness saw a pair of work gloves, a flashlight and a fork with the tongs bent. Lieutenant Dennis looked into the glove compartment, which Sergeant Golbach testified was open, shortly after the passenger, Hanna, was removed from the car and discovered a roll of masking tape and a mallet, the head of which was covered with masking tape. When asked their names and for some identification, Hanna responded by suggesting: "Let's go down to the station and we'll get this straightened out."

Other police officers who had arrived to assist aided in transporting defendants and the car to the Niles police station where a locksmith opened the trunk of the car

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about one-half hour later. In the trunk were articles subsequently identified as taken in a burglary committed earlier that evening in Wilmette, and it is from their conviction of this burglary that defendants now appeal.

Niles Police Sergeant Golbach, who was with Lieutenant Dennis at police headquarters when the 2 telephone calls from Lieutenant Cleburne were received and who was in the squad car with Lieutenant Dennis, also testified. Although he generally corroborated the testimony of Lieutenant Dennis, he did not mention the challenged radio message nor was he questioned specifically about it on either direct or cross examination. The report made out by officers Golbach and Dennis some hours following the arrest contained no reference to the radio message.

Defendants vigorously urge that Lieutenant Dennis testified falsely regarding receipt of the radio message which indicated a car answering the Falcon's description had been seen leaving the area of a burglary; and that, absent this message, no probable cause for the arrest existed. As evidence of its falsity they call attention to the fact that Sergeant Golbach, who was with Lieutenant Dennis, did not mention such message in his testimony; that the written report of their investigation prepared by the sergeant and approved by the lieutenant omitted any reference to the message; that Sergeant Langder, the Skokie police officer who investigated the "burglary in process" call, made no reference to the Falcon being seen near the area from which the call came; that Lieutenant Dennis did not know which of the Skokie officers had relayed the information forming the basis for the radio message the lieutenant testified he received; no other officer was presented by the prosecution who had made

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or heard the call or radio message; and no police radio logs were offered indicating such a radio message was sent. Opposed in some degree to these facts are these additional facts: Sergeant Golbach was not specifically asked whether he heard the radio message; Lieutenant Cleburne testified that he was not in his police car at all times during the period when the message was transmitted; that, while it was Sergeant Langder who answered the "burglary in process" call, numerous other police cars were on the Niles streets, and, conceivably, another car near that area might have observed the Falcon and reported it; that Lieutenant Dennis was a veteran police officer with 12 years experience, characterized in defendants' brief as an experienced and competent police officer; that the police report was approved by him about 5:30 A.M. after almost a full night's work.

The rules that a warrantless arrest may be made on the basis of probable cause and that a warrantless search may be made incidental to a valid arrest have been too often stated by us to require extended reiteration here. (*People* v. *Georgev,* 38 Ill. 2d 165; *People* v. *McCrimmon,* 37 Ill. 2d 40) Whether probable cause existed must be governed by the totality of the facts and circumstances in each case. (*People* v. *Erickson,* 31 Ill. 2d 230.) Here we have no essential dispute in the facts up to the point of the controversial radio message from Niles police headquarters. At that point Lieutenant Dennis was aware of the following factors: (1) The car in question had been identified by an informant who indicated that it may have had some connection with a recent burglary in Evergreen Park, (2) its license was registered in the name of the sister of three known criminals, (3) on April 2, 1966, the

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car was bearing license plates different from those which had been displayed upon it for the previous 4 days, (4) the auto was a considerable distance from the owner's residence, occupied by 2 men, one of whom apparently had been represented to Lieutenant Dennis to be a known burglar and it was being operated without a license plate light. In our judgment these facts justified the action of the officers in stopping the car and questioning its occupants. (*Georgev; McCrimmon.*) If additional support for this action were thought necessary, however, the testimony of Lieutenant Dennis relating to the radio message is not without probative value. The fact that some witnesses did not hear that message and that others did not state whether they heard it or not does not destroy the value of the lieutenant's positive testimony that he received the message. Rather, a question as to his credibility is raised, and resolution of questions of credibility is for the trier of facts. (*People* v. *Clark*, 30 Ill. 2d 216; *People* v. *McCreary*, 29 Ill. 2d 295; *People* v. *Dillon*, 24 Ill. 2d 122.) The trial judge apparently chose to believe the lieutenant, and his evaluation wil not be disturbed by us on the basis of conflicting evidence. *Clark.*

Defendants contend that, even if they were lawfully arrested, the search of the car trunk at a place remote from the arrest and without a warrant was not constitutionally permissible. That search was made shortly after the vehicle had been taken to the police station, apparently about midnight. The test of the validity of the search is not, of course, whether a warrant could have been secured. Rather, the test is whether the search without a warrant was reasonable. (*Cooper* v. *California*, 386 U.S. 58, 62, 17 L. Ed. 2d 730, 733, 87 S. Ct. 788; *United*

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States v. *Rabinowitz*, 339 U.S. 56, 66, 94 L. Ed. 653, 660, 70 S. Ct. 430.) Defendants argue that we "have interpreted Cooper as justifying all searches of the cars in which defendants were arrested, even though such occurred at times and places remote from the arrests", and, citing *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. 216, 20 L. Ed. 2d 538, 88 S. Ct. 1472, urge us to reconsider our cases which have relied on *Cooper* and have sustained searches not contemporaneous with the arrest. (See *People* v. *Rossolille*, 38 Ill. 2d 316; *People* v. *Brown*, 38 Ill. 2d 353; *People* v. *Jones*, 38 Ill. 2d 427; *People* v. *Carter*, 38 Ill. 2d 496; *People* v. *Pickett*, 39 Ill. 2d 88; *People* v. *Nugara*, 39 Ill. 2d 482; *People* v. *McKnight*, 39 Ill. 2d 577; *People* v. *Robinson*, 40 Ill. 2d 453; *People* v. *Weaver*, 41 Ill. 2d 434, filed November 22, 1968.) We perceive nothing in *Dyke*, however, necessitating any change in our interpretation of *Cooper*. By contrast with our facts, the evidence in *Dyke* clearly indicated that the officer who arrested defendants had no such description of the car occupied by the individuals who committed the offense for which defendants were there convicted as would have justified an arrest for that crime. The evidence there supported only an arrest for reckless driving, an offense to which the subsequent search of the car bore no relationship. The court there stated: "Automobiles, because of their mobility, may be searched without a warrant upon facts not justifying a warrantless search of a residence or office [citing cases]," noting, however, that such action required the existence of " 'reasonable or probable cause' to believe that they will find the instrumentality of a crime or evidence pertaining to a crime before they begin their warrantless search." (391 U.S. at

....., 20 L. Ed. 2d at 543, 88 S. C. at 1475.) It is clear to us that the invalidity of the search at the courthouse of the *Dyke* car was not due to its remoteness from the place of arrest but, rather, to the absence of any probable cause to believe such search would be fruitful.

By contrast with *Dyke* we have here adequate grounds for an arrest as well as discovery, at the time the car was stopped, of tools and materials on the dash, floor and in the apparently open glove compartment of the car which were suitable for burglary purposes. In our judgment the ensuing search of the car trunk at the police station was more than adequately supported by "reasonable or probable cause to believe that they will find the instrumentality of a crime or evidence pertaining to a crime." *Dyke; Cooper; State* v. *Perez,* 79 N.M. 417, 444 P. 2d 602; *Reagan* v. *State,* 4 Md. App. 590, 244 A. 2d 623.

The judgment of the circuit court of Cook County is affirmed.

Judgment affirmed.

Mr. Justice Ward took no part in the consideration or decision of this case.